IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 1ST NOVEMBER 2007 / 10TH KARTHIKA 1929

Bail Appl..No. 6461 of 2007()

CRIME NO.333/07 OF THE THENJIPALAM POLICE STATION

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PETITIONERS/ACCUSED

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1. ASHRAF AREEKADAN, S/O.MARAKKAR, AGED 23 YEARS, KOLLAMCHIRAKKAL HOUSE, PERUVALLOORE P.O. THENHIPALAM, MALAPPURAM DIST.

2. MOOYIKKAN MANSOOR ALI, S/O.ASSAIN, AGED 19 YEARS, CHODALAKANDI HOUSE, POTTAMMAL MADU, PERUVALLOORE P.O., THENHIPALAM, MALAPPURAM DIST.

3. P.C.MUNAUVIR, S/O.MOHAMMED, AGED 19 YEARS, PALAMADATHIL CHOLAKKAL, POTTAMMAL MADU, PERUVALLOORE P.O. MALAPPURAM DIST.

BY ADV. SRI.T.V.GEORGE
SMT.LINDA GEORGE

RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 01/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 6461 OF 2007

Dated this the 1st day of November, 2007

ORDER

Application for anticipatory bail. The petitioners are accused 1, 3 and 4. Altogether, there are 4 accused persons. They face allegations in a crime registered under Secs.457 and 380 of the IPC. The alleged incident took place on the night of 30/9/07. The de facto complainant came to know of the incident on 1/10/07. He lodged the First Information Statement only on 5/10/07. His shop was broken open, 30 Kgs. of pepper and a case of cigarettes were allegedly thieved from the premises. Suspected accused are named in the belated F.I.R. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. There is some

disputes between the de facto complainant and the petitioners. Hence false and frivolous allegations are being raised, it is urged. Anticipatory bail may, in these circumstances, be granted to the petitioners, prays the learned counsel for the petitioners.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the mere fact that there has been some delay in the filing of the First Information Statement may not be held to be crucial or vital in a case like the instant one. The Case Diary clearly reveals that the de facto complainant had come to know of the theft on 1/10/07 and he had immediately informed the neighbours from whom he collected the information to suspect the accused persons. After verifying the information, he had lodged the complaint and hence there was delay in lodging of the complaint. It is submitted that the thieved articles have not been recovered yet. The learned Public Prosecutor points out that a reading of the complaint must show that there are no elements of an attempt of false implication. In these circumstances, the petitioners may not be permitted to arm themselves with an order of anticipatory bail. They may be directed to appear before the Investigating Officer or the learned Magistrate and then seek regular bail in the ordinary and normal course.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. There are no features in this case which would justify or warrant the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C. The petitioners must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. In the result, this bail application is dismissed; but with the observation that if the petitioners surrender before the Investigating Officer or the learned Magistrate and seek bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-
(R. BASANT, JUDGE)

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P.S. to Judge